

Agricultural Marketing Service, USDA

§ 981.442

unreimbursed expenditures for qualified activities in any foreign market, if the handler is promoting pursuant to a contract with the Foreign Agricultural Service, USDA (FAS) and/or the California Department of Food and Agriculture (CDFA). Such activities must also meet the requirements of paragraphs (e)(1), (2), (3), (4), and (6) of this section. Unless the Board is administering the foreign marketing program, such activities shall not be eligible for Credit-Back unless the handler certifies that he/she was not and will not be reimbursed by either FAS or the CDFA for the amount claimed for Credit-Back, and has on record with the Board all claims for reimbursement made to FAS and/or the CDFA. Foreign market expenses paid by third parties as part of a handler's contract with FAS or CDFA will not be eligible for Credit-Back.

(6) A handler must file claims with the Board to obtain Credit-Back for promotional expenditures, as follows:

(i) All claims submitted to the Board for any qualified activity must include:

(A) A description of the activity and when and where it was conducted;

(B) Copies of all invoices from suppliers or agencies;

(C) Copies of all canceled checks issued by the handler in payment of these invoices; and

(D) An actual sample, picture or other physical evidence of the activity.

(ii) Handlers may receive credit against their assessment obligation up to the advertising amount of the assessment installment due: *Provided*, That handlers submit the required documentation for a qualified activity at least 2 weeks prior to the mailing of the Board's first and second assessment notices, and at least 3 weeks prior to the mailing of the Board's third and fourth assessment notices in a crop year. In all other instances, handlers must remit the advertising assessment to the Board when billed, and a refund will be issued to the extent of proven, qualified activities.

(iii) Checks from the Board in payment of approved Credit-Back claims will be mailed to handlers on February 15, April 15, June 15, and 30 days after submission of final claims for the crop year pursuant to paragraph (e)(6)(iv) of

this section. To receive payment on these dates, handler claims must be submitted, with all required elements, at least one month prior to the payment date. A handler can receive Credit-Back for his/her allowable direct expenditures only up to the amount of that portion of the handler's assessment designated for marketing promotion, including paid advertising.

(iv) A statement of the Credit-Back commitments outstanding as of the close of a crop year must be submitted in full to the Board within 15 days after the close of that crop year. Final claims pertaining to such commitments outstanding must be submitted with all required elements within 76 days after the close of that crop year. All other final claims for which no statement of Credit-Back commitments outstanding has been filed must be submitted by August 15 of that calendar year.

(f) *Appeals*. If a determination is made by the Board staff that a particular promotional activity is not eligible for Credit-Back because it does not meet the criteria specified herein, or for any other reason, the affected handler may request the Public Relations and Advertising Committee to review the Board staff's decision. If the affected handler disagrees with the decision of the Public Relations and Advertising Committee, the handler may request that the Board review the Committee decision. If the handler disagrees with the decision of the Board, the handler, through the Board, may request that the Secretary review the Board's decision. Handlers have the right to request anonymity in the review of their appeal. The Secretary maintains the right to review any decisions made by the aforementioned bodies at his/her discretion.

[59 FR 35233, July 11, 1994, as amended at 64 FR 41028, July 29, 1999; 64 FR 58766, Nov. 1, 1999; 70 FR 36818, June 27, 2005]

§ 981.442 Quality control.

(a) *Incoming*. Pursuant to § 981.42(a), the quantity of inedible kernels in each variety of almonds received by a handler, including almonds of his own production, shall be determined and disposed of in accordance with the provisions of this paragraph.

(1) *Sampling.* Each handler shall cause a representative sample of almonds to be drawn from each lot of any variety received. The sample shall be drawn before inedible kernels are removed from the lot, or the lot is processed or stored by the handler. For receipts at premises with mechanical sampling equipment and under contracts providing for payment by the handler to the producer for sound meat content, samples shall be drawn by the handler in a manner acceptable to the Board and the inspection agency. The inspection agency shall make periodic checks of the mechanical sampling procedures. For all other receipts, including but not limited to field examination and purchase receipts, accumulations purchased for cash at the handler's door or from an accumulator, or almonds of the handler's own production, sampling shall be conducted or monitored by the inspection agency in a manner acceptable to the Board. All samples shall be bagged and identified in a manner acceptable to the Board and the inspection agency.

(2) *Variety.* For the purpose of classifying receipts by variety to determine a handler's disposition obligation, "variety" shall mean that variety of almonds which constitutes at least 90 percent of the lot: *Provided*, That lots containing a combination of Butte and Padre varieties only, shall be classified as "Butte-Padre", regardless of the percentage of each variety in the lot. If no variety constitutes at least 90 percent of the almonds in a lot, the lot shall be classified as "mixed": *Provided further*, That if the variety or varieties of almonds in a lot are not identified, the lot shall be classified as "mixed", regardless of the percentage of each variety in a lot.

(3) *Analysis of sample.* Each sample shall be analyzed by or under the surveillance of the inspection agency to determine the kernel content and the proportion of inedible kernels in the sample. The inspection agency shall prepare a report for each handler showing, by variety, the total adjusted kernel weight received by handler, the inedible kernel weight and any other information as the Board may prescribe. The report shall cover the handler's daily receipt or the handler's total re-

ceipts during a period not exceeding one week, and shall be submitted by the inspection agency to the Board and the handler.

(4) *Disposition obligation.* (i) Beginning August 1, 2006, the weight of inedible kernels in excess of 0.50 percent of kernel weight reported to the Board of any variety received by a handler shall constitute that handler's disposition obligation. For any almonds sold inshell, the weight may be reported to the Board and the disposition obligation for that variety reduced proportionately.

(ii) If a sufficient sample is not available for any lot of almonds, the handler may establish and substantiate, to the satisfaction of the Board, the received weight, the edible and inedible kernel weights, and the adjusted kernel weight by providing sufficient information as the Board may prescribe. If the handler is only able to establish and substantiate the approximate received weight, an inedible disposition obligation of 10 percent of such received weight may be applied, upon agreement between the Board and the handler.

(5) *Meeting the disposition obligation.* Each handler shall meet its disposition obligation by delivering packer pickouts, kernels rejected in blanching, pieces of kernels, meal accumulated in manufacturing, or other material, to crushers, feed manufacturers, feeders, or dealers in nut wastes on record with the Board as accepted users. Handlers shall notify the Board at least 72 hours prior to delivery: *Provided*, That the Board or its employees may lessen this notification time whenever it determines that the 72 hour requirement is impracticable. The Board may supervise deliveries at its option. In the case of a handler having an annual total obligation of less than 1,000 pounds, delivery may be to the Board in lieu of an accepted user, in which case the Board would certify the disposition lot and report the results to the USDA. For dispositions by handlers with mechanical sampling equipment, samples may be drawn by the handler in a manner acceptable to the Board and the inspection agency. For all other dispositions, samples shall be drawn by or under supervision of the inspection agency. Upon approval by

the Board and the inspection agency, sampling may be accomplished at the accepted user's destination. The edible and inedible almond meat content of each delivery shall be determined by the inspection agency and reported by the inspection agency to the Board and the handler. The handler's disposition obligation will be credited upon satisfactory completion of ABC Form 8. ABC Form 8, Part A, is filled out by the handler, and Part B by the accepted user. Beginning August 1, 2006, at least 50 percent of a handler's total crop year inedible disposition obligation shall be satisfied with dispositions consisting of inedible kernels as defined in §981.408: *Provided*, That this 50 percent requirement shall not apply to handlers with total annual obligations of less than 1,000 pounds. At least 25 percent of a handler's total crop year inedible disposition obligation shall be satisfied with dispositions consisting of inedible kernels as defined in §981.408: *Provided*, That this 25 percent requirement shall not apply to handlers with total annual obligations of less than 1,000 pounds. Each handler's disposition obligation shall be satisfied when the almond meat content of the material delivered to accepted users equals the disposition obligation, but no later than August 31 succeeding the crop year in which the obligation was incurred.

(6) *Inedible almonds unfit for processing*. All lots received from growers as "inedible almonds unfit for processing," shall be exempt from the requirements of paragraphs (a) (1) and (3) of this section, but shall be disposed of in their entirety (other than as pickouts), as provided in paragraph (a)(5) of this section. Disposition of these lots shall not be credited toward the disposition obligation of paragraph (a)(4) of this section. If a grower sells or ships inedible almonds to a person other than a handler, the grower thereby becomes a handler and subject to all the requirements of this paragraph.

(7) *Accepted Users*. An accepted user's eligibility shall be subject to the following criteria:

- (i) Completion of an application with the Board for accepted user status;
- (ii) Submission of a business data sheet to the Board; and

(iii) The accurate and prompt submission of ABC Form 8 Part B to the Board for each lot of almonds received, supported by a public weighmaster weight certificate issued at the request of the accepted user at the time of receipt.

(iv) The Board may deny or revoke accepted user status at any time if the applicant or accepted user fails to meet the terms and conditions of §981.442, or if the applicant or accepted user fails to meet the terms and conditions set forth in the accepted user application (ABC Form 34).

(v) The eligibility of accepted users shall be reviewed annually by the Board. Handlers will not receive credit towards their disposition obligations pursuant to paragraph (a)(4) of this section for lots where the difference between the weight of the lot reported by the inspection agency on ABC Form 8 and the weight of the lot reported on the public weighmaster weight certificate exceeds 2.0 percent.

(b) *Outgoing*. Pursuant to §981.42(b), beginning September 1, 2007, and except as provided in §981.13 and in paragraph (b)(6) of this section, handlers shall subject their almonds to a treatment process or processes prior to shipment to reduce potential *Salmonella* bacteria contamination in accordance with the provisions of this section.

(1) *Treatment process*. Treatment processes shall utilize technologies that have been determined to achieve in total a minimum 4-log reduction of *Salmonella* bacteria in almonds, pursuant to a letter of determination issued by the Food and Drug Administration (FDA), or acceptance by a scientific review panel as identified by the Board (Technical Expert Review Panel or "TERP"). Such panel shall be approved at least annually by the Board prior to the beginning of each crop year, or as needed during the crop year.

(2) *On-site versus off-site treatment*. Handlers shall subject almonds to a treatment process or processes prior to shipment either at their handling facility (on-site), or at an off-site treatment facility located within the production area. Transportation of almonds by a handler to an off-site treatment facility shall not be deemed a shipment.

(3) *Validation by process authorities.* Handlers shall only use, or transport their almonds to off-site treatment facilities that use treatment processes that have been validated by a Board-approved process authority. Treatment technology and equipment that have been modified to a point where operating parameters such as time, temperature, or volume change, shall be revalidated.

(i) Validation means that the treatment technology and equipment have been demonstrated to achieve in total a minimum 4-log reduction of *Salmonella* bacteria in almonds.

(ii) A process authority is a person that has expert knowledge of appropriate processes for the treatment of almonds as defined in paragraph (b)(1) of this section, and meets the following criteria:

(A) Knowledge about the equipment used for the treatment process;

(B) Experience in conducting appropriate studies to determine the ability of the equipment to deliver the appropriate treatment (such as heat penetration or heat distribution); and

(C) Able to determine that sufficient data has been gathered to identify the critical factors needed to ensure the quality of the final product.

(iii) Process authorities may be employees of the entity for which they are conducting validation. The Board shall provide process authorities specific protocols and parameters for treatment processes that are FDA determined or TERP accepted.

(iv) Process authorities must submit an initial application to the Board on ABC Form No. 51, "Application for Process Authority for Almonds," and be approved by the TERP. Should the applicant disagree with the TERP's decision concerning approval, the applicant may appeal the decision in writing to the Board, and ultimately to USDA. For subsequent crop years, approved applicants with no changes to their initial application must send the Board a letter, signed and dated, indicating that there are no changes to the application the Board has on file.

(v) The TERP may revoke any approval for cause. The TERP shall notify the process authority in writing of the reasons for revoking the approval.

Should the process authority disagree with the TERP's decision, he/she may appeal the decision in writing to the Board, and ultimately to USDA. A process authority whose approval has been revoked must submit a new application to the TERP and await approval.

(4) *Compliance and verification.* In accordance with the requirements of this paragraph, handlers shall utilize either an on-site verification program (traditional), or an audit-based verification program to ensure that their almonds have been subjected to a treatment process to reduce *Salmonella* bacteria prior to shipment. Each handler may decide which verification program would be the most cost-effective for his or her operation.

(i) By May 31, each handler shall submit to the Board a Treatment Plan for the upcoming crop year. A Treatment Plan shall describe how a handler plans to treat his or her almonds, and must address specific parameters as outlined by the Board for the handler to ship almonds. Such plan shall be reviewed by the Board, in conjunction with the inspection agency, to ensure it is complete and can be verified, and be approved by the Board. Almonds sent by a handler for treatment to an off-site facility affiliated with another handler shall be subject to the approved Treatment Plan utilized at that facility. Handlers shall follow their own approved Treatment Plans for almonds sent to an off-site facility that is not affiliated with another handler.

(ii) Handlers utilizing an on-site verification program shall cause the inspection agency to verify that their Treatment Plans have been followed, and that their almonds have been subjected to a treatment process that has been validated by a Board-approved process authority. Such handlers shall submit, or cause to be submitted, a verification report to the Board. The inspection agency must physically observe the treatment process to issue such report.

(iii) Handlers utilizing an audit-based verification program shall be subject to periodic audits conducted by the inspection agency. The inspection agency shall provide copies of the audit report to the Board. Handlers who do not

comply with an audit-based verification program shall be required to revert to an on-site verification program.

(iv) Interhandler transfers of almonds may or may not be treated prior to transfer. Handlers receiving untreated almonds from another handler shall be responsible for treating the product. Handlers receiving treated almonds from another handler must have procedures outlined in their Treatment Plan addressing how the integrity of the treated almonds will be maintained. In all instances involving interhandler transfers, the receiving handler shall be responsible for ensuring that the almonds are treated prior to shipment and maintaining documentation to that effect.

(v) An off-site treatment facility that does not handle almonds, pursuant to §981.16, shall provide access to the inspection agency and Board staff for verification of treatment and review of treatment records. A treatment process at an off-site treatment facility that has been validated by a Board approved process authority is deemed to be approved by the Board for handler use. The Board may revoke any such approval for cause. The Board shall notify the off-site treatment facility of the reasons for revoking the approval. Should the off-site facility disagree with the Board's decision, it may appeal the decision in writing to USDA. Handlers may treat their almonds only at off-site treatment facilities that have been deemed to be approved by the Board.

(5) *Records.* Handlers shall maintain records and documentation that will be subject to audit by the Board for the purpose of verifying compliance with this section. Records must be maintained for two full years following the end of the crop year, and must identify lots from the point of treatment forward to the point of shipment by the handler. Lot identification shall also provide the ability to differentiate treated from untreated product. Off-site treatment facilities that do not handle almonds pursuant to §981.16, shall maintain treatment records for 2 full years following the end of a crop year and make such records available to the Board.

(6) *Exemptions.* Handlers may ship untreated almonds under the following conditions. For purposes of this section, container means a box, bin, bag, carton, or any other type of receptacle used in the packaging of bulk almonds.

(i) Handlers may ship untreated almonds for further processing directly to manufacturers located within the U.S., Canada or Mexico. This program shall be termed the Direct Verifiable (DV) program. Handlers may only ship untreated almonds to manufacturers who have submitted ABC Form No. 52, "Application for Direct Verifiable (DV) Program for Further Processing of Untreated Almonds," and have been approved by the TERP. Such almonds must be shipped directly to approved manufacturing locations, as specified on Form No. 52. Such manufacturers DV users must submit an initial Form No. 52 to the Board and be approved by the TERP. Should the applicant disagree with the TERP's decision concerning approval, it may appeal the decision in writing to the Board, and ultimately to USDA. For subsequent crop years, approved applicants with no changes to their initial application must send the Board a letter, signed and dated, indicating that there are no changes to the application the Board has on file. The TERP may revoke any approval for cause. The TERP shall notify the manufacturer in writing of the reasons for revoking the approval. Should the manufacturer disagree with the TERP's decision, it may appeal the decision in writing to the Board, and ultimately to USDA. A manufacturer whose approval has been revoked must submit a new application to the TERP and await approval. The Board shall issue a DV User code to an approved manufacturer. Handlers must reference such code in all documentation accompanying the lot and identify each container of such almonds with the term "unpasteurized." Such lettering shall be on one outside principal display panel, at least ½ inch in height, clear and legible. If a third party is involved in the transaction, the handler must provide sufficient documentation to the Board to track the shipment from the handler's facility to the approved DV user. While a third party may be

involved in such transactions, shipments to a third party and then to a manufacturing location are not permitted under the DV program. Approved DV Users shall:

(A) Subject such almonds to a treatment process or processes using technologies that achieve in total a minimum 4-log reduction of *Salmonella* bacteria as determined by the FDA, accepted by the TERP, or established by a process authority approved in accordance with and subject to the provisions and procedures of paragraph (b)(3) of this section. Establish means that the treatment process and protocol have been evaluated to ensure the technology's ability to deliver a lethal treatment for *Salmonella* bacteria in almonds to achieve a minimum 4-log reduction;

(B) Identify the manufacturing locations where treatment will occur;

(C) Have their treatment technology and equipment validated by a Board-approved process authority, and provide documentation with their DV application to verify that their treatment technology and equipment have been validated by a Board-approved process authority. Such documentation may include, but not be limited to, a letter from such process authority certifying the validation. Such documentation shall be sufficient to demonstrate that the treatment processes and equipment achieve a 4-log reduction in *Salmonella* bacteria. Treatment technology and equipment that have been modified to a point where operating parameters such as time, temperature, or volume change, shall be revalidated;

(D) Have their technology and procedures verified by a Board-approved DV auditor to ensure they are being applied appropriately. A DV auditor may not be an employee of the manufacturer that he/she is auditing. DV auditors must submit a report to the Board after conducting each audit. DV auditors must submit an initial application to the Board on ABC Form No. 53, "Application for Direct Verifiable (DV) Program Auditors," and be approved by the TERP. Should the applicant disagree with the TERP's decision concerning approval, it may appeal the decision in writing to the Board, and ultimately to USDA. For subsequent crop

years, approved DV auditors with no changes to their initial application must send the Board a letter, signed and dated, indicating that there are no changes to the application the Board has on file. The TERP may revoke any approval for cause. The TERP shall notify the DV auditor in writing of the reasons for revoking the approval. Should the DV auditor disagree with the TERP's decision, it may appeal the decision in writing to the Board, and ultimately to USDA. A DV auditor whose approval has been revoked must submit a new application to the TERP and await approval;

(E) Maintain all records regarding validation and verification of treatment methods, processing, and product traceability. Such records shall be retained for two years and shall be made available for review by the Board; and,

(F) Ship any almonds which will not be treated to a handler, to another approved DV user, to locations outside the U.S., Canada, and Mexico (containers must remain identified with the term "unpasteurized"), as specified in § 981.442(b)(6)(i), or dispose of such almonds in non-edible channels.

(ii) Handlers may ship untreated almonds directly or through a third party to locations outside the U.S., Canada, and Mexico, provided that each container of such almonds is identified with the term "unpasteurized." Such lettering shall be on one outside principal display panel, at least ½ inch in height, clear and legible. If a third party is involved in the transaction, the handler must provide sufficient documentation to the Board to track the shipment from the handler's facility to the importer in the foreign country.

(7) *Other restrictions.* The provisions of this section do not supersede any restrictions or prohibitions regarding almonds grown in California under the Federal Food, Drug and Cosmetic Act,

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or any other applicable laws or regulations or the need to comply with applicable food and sanitary regulations of city, county, State or Federal agencies.

[42 FR 3160, Jan. 17, 1977, as amended at 43 FR 47969, Oct. 18, 1978; 44 FR 30075, May 24, 1979; 44 FR 67077, Nov. 23, 1979; 49 FR 40788, Oct. 18, 1984; 50 FR 47708, Nov. 20, 1985; 51 FR 36383, Oct. 10, 1986; 52 FR 45608, Dec. 1, 1987; 53 FR 26424, July 13, 1988; 56 FR 65420, Dec. 17, 1991; 59 FR 13434, Mar. 22, 1994; 61 FR 42991, Aug. 20, 1996; 62 FR 37488, July 14, 1997; 63 FR 41711, Aug. 5, 1998; 66 FR 39273, July 30, 2001; 69 FR 40536, July 6, 2004; 71 FR 70646, Dec. 6, 2006; 72 FR 15034, Mar. 30, 2007; 72 FR 29055, May 24, 2007]

§981.450 Exempt dispositions.

As provided in §981.50 any handler disposing of almonds for crushing into oil, or for poultry or animal feed, may have the kernel weight of these almonds excluded from his receipts, and exempt from program obligations so long as the handler qualifies as, or delivers such almonds to, a crusher, a feeder, or dealer in nut waste; the crusher, feeder, or dealer are acceptable to the Board; each delivery is made directly to the crusher, feeder, or dealer, by June 30 of the crop year; and each delivery is certified to the Board by the handler on ABC Form 8.

[42 FR 19322, Apr. 13, 1977]

§981.455 Interhandler transfers.

(a) *Transfers of almonds.* Interhandler transfers of almonds pursuant to §981.55 shall be reported to the Board on ABC Form 7. The report shall contain the following information:

- (1) Date of transfer;
- (2) The names, and plant locations of both the transferring and receiving handlers;
- (3) The variety of almonds transferred;
- (4) Whether the almonds are shelled or unshelled;
- (5) The name of the handler assuming reserve and assessment obligations on the almonds transferred;
- (6) Whether the almonds had been treated to achieve a 4-log reduction in *Salmonella* bacteria, pursuant to §981.442(b); and
- (7) A unique handler identification number for each lot.

(b) *Transfers of reserve credits.* A handler may transfer reserve credits to another handler after having filed with the Board, in accordance with §981.474, a completed ABC Form 13/14 covering the almonds to be diverted to a non-competitive outlet and all the documentation applicable thereto. Such a transfer does not relieve the transferring handler of any reserve obligations for the applicable crop year. The transferred credit shall not exceed the quantity needed by the receiving handler to cover that handler's reserve obligation. The Board shall complete the transfer upon receipt of an ABC Form 11 executed by both handlers. No transfer of reserve credits shall be made to satisfy a handler's inedible disposition obligation incurred pursuant to §981.42(a).

(c) *Transfers of reserve withholding obligation.* A handler may transfer reserve withholding obligation to other handlers pursuant to §981.55 after having filed with the Board an ABC Form 11 executed by both handlers. The Board shall approve the transfer upon receipt of the properly completed form.

(d) Transfer of inedible obligation may be made, with the approval of the Board, only when the inedible kernels are physically transferred with the entire lot of almonds. The transfer of the lot shall be reported on ABC Form 9, showing date of transfer and, for the transferring handler, the (1) original inspection certificate number, (2) total weight shown on the certificate, and (3) weight of inedible kernels shown on the certificate. For the receiving handler, ABC Form 9 shall show the (1) new inspection certificate number, (2) total weight shown on the certificate, and (3) weight of inedible kernels shown on the certificate. ABC Form 9 shall be signed by both, the transferring handler and the receiving handler, and submitted by the receiving handler to the Board for approval.

[42 FR 19322, Apr. 13, 1977, as amended at 44 FR 30076, May 24, 1979; 56 FR 19794, Apr. 30, 1991; 62 FR 56051, Oct. 29, 1997; 72 FR 51992, Sept. 12, 2007]

§981.466 Almond butter.

Almond butter as used in §981.66(c) is hereby defined as a comminuted food product prepared by grinding shelled or blanched almonds into a homogeneous